

MAINE STATE LEGISLATURE

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STATE OF MAINE.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

NOVEMBER 30, 1908.

WATERVILLE

SENTINEL PUBLISHING COMPANY

1909

within the meaning of the constitutional requirements above noted. In this connection, I beg to call your attention to the following cases:

Ristine Auditor vs. State of Indiana, 20 Ind. 328. State vs. Moore, 50 Neb. 88.

However, irrespective of whether or not the act in question is constitutional, it will be perceived upon careful examination that R. S. Chapter 39, Section 19, does not expressly provide that the expenses in question shall be paid out of the fees. It is silent as to exactly what money in the state treasury the expenses shall be paid from. It simply provides in substance, so far as this matter is concerned, that the governor and council may draw a warrant on the treasury for the payment of the expenses and adds that these payments shall not exceed the amount of fees. It does not say in express terms that the expenses shall be paid from the fees.

The view of the state auditor is that all these acts shall be construed together and reconciled so far as possible. Considering everything, it seems to him that the state cannot safely expend more than \$2,000, for these expenses, for the year 1908.

In looking at the matter, the auditor perhaps should be upon the safe side in a question of any uncertainty.

In view of all the foregoing, while I must confess there is some uncertainty as to any implied provisions of R. S. Chapter 39, Section 19, and while after much time given in investigation, I am not able to find any authorities clearly and concisely settling every possible question which may be before us in this matter, yet it is my opinion that the auditor is justified in the views he has reached.

INSANE CONVICTS.—SUPPORT AFTER EXPIRATION OF SENTENCE.

H. W. Mitchell, M. D., Supt. Eastern Maine Insane Hospital, Bangor, Maine.

DEAR SIR:—I have the honor to advise you as follows, as to whether the board after expiration of time of sentence of an insane jail convict, regularly and lawfully transferred from the jail, while serving sentence, to the State Insane Hospital and

lawfully detained at the Hospital after the expiration of his sentence, should be charged to the state, or to the town where the person has his legal residence in the State of Maine.

R. S. Chapter 138, Section 7, provides as follows:

"Section 7. If a person convicted of any crime, in the supreme judicial court or either superior court, is found by the judge of such court to be insane when motion for sentence is made, the court may cause such person to be committed to the insane department of the state prison under such limitations as the court may direct; *provided* that the crime of which such person is convicted is punishable by imprisonment in the state prison; otherwise such commitment shall be to one of the insane hospitals; if at the expiration of the period of commitment to the insane department of the state prison such person has not become of sound mind in the opinion of the superintendent of the insane hospital at Augusta, prison physician and warden, he shall be removed by them to one of the insane hospitals. Persons committed by a judge of the supreme judicial or a superior court before final conviction, or after conviction and before sentence whether originally committed or subsequently removed thereto, and insane convicts after the expiration of their sentences, shall be supported while in the insane hospital in the manner provided by law in the case of persons committed by municipal officers, and the provisions of sections twenty-two to twenty-five inclusive, of chapter one hundred forty-four shall apply to such cases."

Without quoting, as you already know, R. S., Chapter 144, Sections 22 to 25, with any amendments thereof, provide in a general way for support by towns. We assume your case in hand is not one where friends or other individuals are liable for the support.

Turning to Chapter 104, of the Public Laws of 1905, we note that the earlier sections in the act provide for the removal of insane convicts in the state prison to the insane department thereof, and in jails to one of the insane hospitals by proceedings before the judge of the municipal court as therein provided. Section 4 of this act, however, reads as follows:

"Section 4. The certificate of such judge stating the town in which the prisoner or person detained resided, when such prisoner or person is in either of the insane hospitals, is sufficient

evidence in the first instance to charge such town for the expenses of his support in such hospital, if he shall be there detained after sentence on which he was originally committed would have expired, but when his friends or others file a bond with the treasurer of the hospital, in which he is confined such town shall not be liable for his support, unless new action is had by reason of the inability of the patient or his friends longer to support him, and such action may be had in the manner provided by statute for recommitment of patients to the insane hospitals.

Any town thus made chargeable in the first instance and paying for the support of such insane person may recover the amount paid from the insane, if able, or other persons legally liable for his support or from the town where his legal settlement is, but if he has no legal settlement in the state such expense shall be refunded by the state, and the governor and council shall audit all such claims and draw their warrant on the treasurer therefor. Such person shall not suffer the disabilities of pauperism or be deemed a pauper by reason of such support, but the time during which such person is so supported shall not be included in the period of residence necessary to change his settlement."

In conclusion, in the case by you presented under the laws above quoted it is my opinion that the board in question should be charged to the town where the insane person has his legal residence in the state of Maine rather than to the state itself.

STATE SCHOOL FOR BOYS—PAYMENT OF EXPENSE OF COMMITMENT AND OF SUBSISTENCE.

E. P. Wentworth, Esq., Supt. School for Boys, Portland, Maine.

DEAR SIR:—Relative to your inquiry in the case of W. S. T., reported by you as committed to the State School for Boys, after conviction under the charge in substance of intoxication in a dwelling house of another and disturbing the family of the latter, and asking if, under R. S., Chapter 143, Section 3, as amended by the Public Laws, of 1907, Chapter 120, the expenses of conveying said W. S. T. to the State School for Boys, and his subsistence and clothing during the time while he remains there, not exceeding \$1 per week, shall be paid by the state, I beg leave to reply as follows: